

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

S. SHANE SMITH,)	
)	
Plaintiff,)	
)	
v.)	1:16CV396
)	
FRANK L. PERRY, et al.,)	
)	
Defendants.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on August 2, 2018, was served on the parties in this action. (Docs. 80, 81.) Defendants Carol Hurlocker, Amy Leonard, David Livengood, Frank L. Perry, George T. Solomon, Joseph Valliere, Mike Williams, Larry Huggins, Stephen W. Smith, Officer Weaver, Charlotte Williams, and Richard Neely objected to the Recommendation. (Doc. 85.) Plaintiff filed a response. (Doc. 86.)

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a *de novo* determination, which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment (Doc. 63) is GRANTED IN PART and DENIED IN PART as follows:

1. Summary judgment against Plaintiff on his inadequate legal services claim is DENIED at this time; however, to the extent Defendants request permission to file supplemental briefing as to this claim on the ground of oversight (Doc. 85 at 2), Defendants shall be permitted to refile their motion on this ground pursuant to Federal Rule of Civil Procedure 56(e)(1). See, e.g., Ean Holdings, LLC v. Ishola, No. 2:13-26841, 2015 WL 1276900 at *5 (S.D. W. Va. Mar. 20, 2015); Frazier v. Repass, No. 1:11-CV-03356-JMC, 2013 WL 3282903 at *2 (D.S.C. June 27, 2013); Sodexo Operations, LLC v. Columbus Cty. Bd. of Educ., No. 7:11-CV-103-FL, 2013 WL 461808 at *3 (E.D.N.C. Feb. 6, 2013), adopted by 2013 WL 655005 (E.D.N.C. Feb. 21, 2013) ("Therefore, in accordance with Rule 56(e)(1), it will be recommended that the motion for summary judgment be denied without prejudice to [the moving party]'s refiling it, subject to various terms specified below"); see also id. (collecting cases). Any such renewed motion must be filed within 30 days after entry of this order.

2. Summary judgment for Defendants Perry, Solomon, Huggins, Charlotte Williams, Neely, Valliere, Mike Williams, Livengood, Smith, Leonard, Hurlocker, and Weaver is GRANTED on Plaintiff's claims for failure to answer grievances and disability discrimination;

3. Summary judgment for Defendants Perry, Solomon, Huggins,

Charlotte Williams, Neely, Mike Williams, Livengood, Leonard, and Weaver is GRANTED on Plaintiff's claim for failure to prevent sexual abuse;

4. Summary judgment for Defendants Valliere, Smith, and Hurlocker is DENIED on Plaintiff's claim for failure to prevent sexual abuse;

5. Summary judgment for Defendants Perry, Solomon, Huggins, Charlotte Williams, Neely, Mike Williams, Livengood, Leonard, Hurlocker, and Weaver is GRANTED on Plaintiff's claim for failure to supervise/train;

6. Summary judgment for Defendants Valliere and Smith is DENIED on Plaintiff's claim for failure to supervise/train;

7. Summary judgment for Defendants Perry, Solomon, Huggins, Charlotte Williams, Mike Williams, Livengood, Smith, Leonard, Hurlocker, and Weaver is GRANTED on Plaintiff's claim for retaliation; and

8. Summary judgment for Defendants Neely and Valliere is DENIED on Plaintiff's claim for retaliation in connection with his exclusion from certain dining facility areas and a related infraction charge.

/s/ Thomas D. Schroeder
United States District Judge

September 21, 2018